



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Fifteenth day of February Two Thousand Twenty Two

PRESENT

The Hon`ble Mr Justice R. PONGIAPPAN

CRIMINAL ORIGINAL PETITION No.3317 of 2022

M.OM PRAKASH

[PETITIONER / ACCUSED]

Vs

STATE REP BY
THE INSPECTOR OF POLICE,
W-25, ALL WOMEN POLICE STATION,
T.NAGAR,
CHENNAI-17.
CR.NO.05 OF 2021.

[RESPONDENT]

For Petitioner : M/S.G.NIRMAL KRISHNAN Advocate

For Respondent : MR.S.SANTHOSH, Govt. Advocate (Crl. Side)

PETITION FOR ANTICIPATORY BAIL 438 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner, who apprehends arrest for the alleged offences under Sections **498(A), 494, 420, 294(b) and 506(ii) of IPC** in Crime No.05 of 2021, on the file of the respondent police, seeks anticipatory bail.

2. The case of the prosecution is that the petitioner and the defacto complainant are husband and wife and it is alleged that the petitioner attacked the defacto complainant by demanding dowry and also abused her by using filthy language. Hence, the present case.

3. The learned counsel appearing for the petitioner submitted that the petitioner is an innocent person and he has been falsely implicated in this case. He would further submit that the petitioner herein is the husband of the defacto complainant. It is a specific submission that, from the year 2017 onwards, there was a dispute between them and the petitioner filed petition for divorce. On the other hand, the defacto complainant/wife filed an application for restitution of conjugal rights. In the said circumstances, now, in



order to take vengeance, the present case has been registered as against the petitioner based upon the false complaint given by the defacto complainant. Hence, he prays for grant of anticipatory bail to the petitioner.

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4. The learned Government Advocate (Criminal Side) appearing for the respondent Police raised objection stating that the investigation is pending.

5. Submissions made by the learned counsels appearing on either sides are considered.

6. The respondent police registered a case against the petitioner for the offence punishable under Sections 498(A), 494, 420, 294(b) and 506(ii) of IPC. Admittedly, in the year 2017 itself, the petitioner herein filed a Matrimonial Original Petition as against the defacto complainant, wherein, he prayed for the relief of divorce. Further in the year 2019, the defacto complainant filed a petition for restitution of conjugal rights and both the petitions are pending before the VII Additional Family Court, Chennai. In the said circumstances, the present case has been registered in the year 2021, after lapse of 3 years from the date of arising the dispute. Further, the facts and circumstances narrated in the complaint would show that the custodial interrogation of the petitioner is not necessary for completing the investigation. Further, the present dispute having by the petitioner with the defacto complainant is in respect of the matrimonial affairs and it is necessary to follow the decision of our Hon'ble Supreme Court in **Arnesh Kumar Vs State of Bihar and another [Crl.A.No.1277 of 2014]**, wherein it has been held as follows:

"There is phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A of the IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under the provision. In a quite number of cases, bed-ridden grandfathers and grandmothers of the husbands, their sisters living abroad for decades are arrested. "Crime in India 2012 Statistics" published by National Crime Records Bureau, Ministry of Home Affairs shows arrest of 1,97,762 persons all over Indian during the year 2012 for offence under Section 498-A of the IPC, 9.4% more than the year 2011. Nearly a quarter of those arrested under this



provision in 2012 were women ie. 46, 951 which depicts that mothers and sisters of the husbands were liberally included in their arrest net. Its share is 6% out of the total persons arrested under the crimes committed under Indian Penal Code. It accounts for 4.5% of total crimes committed under different sections of penal code, more than any other crimes excepting theft and hurt. The rate of charge-sheeting in cases under Section 498-A IPC is as high as 93.6% while the conviction rate is only 15%, which is lowest across all heads. As many as 3,72,707 cases are pending trial of which on current estimate, nearly 3,17,000 are likely to result in acquittal. Arrest brings humiliation, curtails freedom and casts scars forever. Law makers know it so also the police. There is a battle between the law makers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the Cr.P.C. It has not come out of its colonial image despite six decades of independence; it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive"

7. Taking note of all the above said aspects into consideration and having regard to the nature of the offence committed by the petitioner, this Court is inclined to grant anticipatory bail to the petitioner with certain conditions.

8. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on his appearance, within a period of fifteen days from the date of receipt of a copy of this order, before **the learned XVII Metropolitan Magistrate, Saidapet, Chennai**, on condition that the petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only), with two sureties each for a like sum to the satisfaction of the respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned and on further condition that:

(a) the petitioner and the sureties shall affix their photographs and left thumb impression in the surety bond and the Court concerned may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;



(b) the petitioner shall report before the respondent police daily at 10.00 a.m., for a period of thirty (30) days and thereafter as and when required for interrogation.

(c) the petitioner shall not tamper with evidence or witness either during investigation or trial;

(d) the petitioner shall not abscond either during investigation or trial;

(e) on breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji Vs. State of Kerala [(2005) AIR SCW 5560]**; and;

(f) if the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

-sd/-

15/02/2022

This order, on being produced, be punctually observed and carried into execution by all concerned

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Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE METROPOLITAN MAGISTRATE,
NO.XVII, SAIDAPET, CHENNAI.

2 THE CHIEF METROPOLITAN MAGISTRATE,
EGMORE, CHENNAI. [FOR INFORMATION]

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
W-25, ALL WOMEN POLICE STATION,
T.NAGAR, CHENNAI-17.

+1 CC to M/S.G.NIRMAL KRISHNAN Advocate on payment of necessary charges SR.NO.2448

CRL OP.3317/2022

Date :15/02/2022

TA-18/02/2022